

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

**Case No: 3:17-cv-01362
Judge Robert C. Chambers**

**AMERISOURCEBERGEN DRUG
CORPORATION, CARDINAL HEALTH INC, and
MCKESSON CORPORATION,
GREGORY DONALD CHANEY, M.D.,**

Defendants.

**MOTION TO STAY RESPONSE DEADLINE TO MOTIONS TO DISMISS,
MOTION FOR JUDGMENT ON THE PLEADINGS AND
OTHER PENDING CASE MANAGEMENT DEADLINES**

Plaintiff, The City of Huntington, moves to temporarily stay, or, in the alternative, to extend, the deadlines for filing responses to the pending motions to dismiss and motion for judgment on the pleadings (ECF Nos. 13, 15, and 20), as well as the deadlines set in the Court's Order and Notice regarding the Rule 26(f) meeting and report (ECF No. 3), pending resolution of Plaintiff's motion to remand.

This matter was removed to this Court on February 23, 2017. (ECF No. 1). On March 2, 2017, Defendants filed their motions to dismiss. (ECF Nos. 13 and 15). Plaintiff's responses to these motions are thus due on March 16, 2017. On February 24, 2017, the Court issued its Order and Notice, setting forth various deadlines related to the Rule 26(f) meeting and report. (ECF No. 3). However, Plaintiff filed a motion to remand this matter to state court on this day March 15, 2017, prior to the 30 day deadline imposed by 28 U.S.C. § 1447(c). Until the Court has determined whether federal jurisdiction is proper, Plaintiff asserts that extended

motion practice and Rule 26(f) practice will be an inefficient use of the Court's, and Parties', limited resources. For instance, should the matter be returned to state court, any schedule agreed to in this forum would likely be rendered a nullity. Moreover, numerous courts in this District have found that "it is ordinarily improper to resolve the motions to dismiss before deciding [a] motion to remand." *McCoy v. Norfolk S. Ry. Co.*, 858 F. Supp. 2d 639, 642 (S.D.W. Va. 2012); *see also, e.g., Ball v. CSX Transp., Inc.*, CIV.A. 3:14-13369, 2014 WL 1874560, at *2 (S.D.W. Va. May 9, 2014) ("In a given case, a court should resolve a motion to remand before turning to resolution of a motion to dismiss."); *Bilmar Ltd. P'ship v. Prima Mktg., LLC*, CIV.A. 2:13-14391, 2013 WL 6195722, at *1 (S.D.W. Va. Nov. 27, 2013) ("Before the court may consider the merits of the motions to dismiss, it must first resolve the jurisdictional question posed by the motion to remand."). Because the Court should consider the motion to remand first, Plaintiff asserts that briefing on the motions to dismiss should be delayed.

Accordingly, Plaintiff requests the Court to stay, or extend, the deadlines to respond to the pending motions to dismiss, motion for judgment on the pleadings and the Rule 26(f) related deadlines, until Plaintiff's forthcoming motion to remand has been ruled upon.

Respectfully submitted,
THE CITY OF HUNTINGTON,
By Counsel,

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CERTIFICATE OF SERVICE

I, Charles R. Webb, counsel for Plaintiff, the City of Huntington, do hereby certify service that on March 15, 2017, I served the forgoing ***MOTION TO STAY RESPONSE DEADLINE TO MOTIONS TO DISMISS, MOTION FOR JUDGMENT ON THE PLEADINGS AND OTHER PENDING CASE MANAGEMENT DEADLINES*** upon the parties hereto by filing a true copy thereof *via* ECF to the following counsel of record:

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